

Certificate of Need Exemption

The District is requesting that the National Capital Medical Center (NCMC) be exempted from the Certificate of Need process, so as not to delay the project schedule and delivery of hospital services to those in need.

History of the CON

Certificate of Need (CON) programs became popular in the 1970s when the federal government passed a law mandating that states implement CON programs as a condition of Medicare and Medicaid funding. The theory was that CON would control healthcare costs by limiting the number of competitors and volume of services in the market. Similar theories were also applied to other industries, such as airlines and trucking. These industries were deregulated by the federal government in the 80s, and the federal CON law was repealed. There was no evidence that the CON controlled costs. In fact, limiting competition was shown to actually increase costs. Since that time, 24 states have abolished their CON programs for hospitals and acute care services.

Essentially, the CON is an outdated regulatory measure that was unsuccessful in accomplishing its original intent. It has been kept alive in states by special interest groups (namely, hospitals) who want to block competition.

The District of Columbia first implemented CON in 1976, two years after the federal mandate. A number of commissions have been initiated over the last 20 years (1985, 1994, 1995, 2000, and 2003) to determine if the CON should exist. Between 1995 and 1997, the District's CON was completely defunct for about two and a half years. When CON was last reviewed in 2003, DC Hospital Association lobbyists rewrote the legislation. A new funding structure was established whereby CON applicants pay an application fee and hospitals pay an annual user fee which goes into a non-lapsing revolving fund for the agency, the State Health Planning and Development Agency (SHPDA).

Unlimited Process of Appeals

The District is most concerned about the delay that will inevitably result from the CON's lengthy appeals process. The District CON law allows for three layers of appeals, which could take anywhere from two to six years to resolve. There are a number of examples of CON applications that have gotten stuck in the appeals process for several years (*See attached memo from Department of Health Counsel*). The NCMC project is opposed by special interests that will undoubtedly use the appeals process to its full extent. A delay of this nature would result in a higher price-tag for the NCMC, as construction costs rise each year, and it would significantly delay the implementation of needed health services.

FHA Financing

Howard has proposed to fund its share of the NCMC project costs through the Federal Housing Administration, HUD Section 242 program. The need for and financial viability of the project will be sufficiently and thoroughly evaluated through the FHA federal financing process, where a rigorous feasibility and market need analysis will be conducted by independent consultants with hospital industry expertise. FHA does not require that projects go through a CON process; that requirement was eliminated because it was a barrier to projects in non CON jurisdiction. Moreover, even in states with a CON process, the CON is only a starting point for FHA's comprehensive review and analysis. The table below provides a list of hospital projects that have received FHA financing in the last five years. Please note that seven out of thirty (almost 1/4) of the FHA funded projects from the last five years did not go through CON.

FHA Hud Section 242 Awards from 2001-2006 for CON and Non-CON Projects

Hospital	City	State	Date	Mtg Amount	CON Y/N
North Valley Hospital	Whitefish	MT	12/10/2005	29,250,000	Yes
ST. LUKE'S-ROOSEVELT HOSPITAL	New York	NY	11/16/2005	319,555,000	Yes
HOSPITAL FOR SPECIAL SURGERY	New York	NY	10/20/2005	57,605,000	Yes
MONTEFIORE MEDICAL CENTER	BRONX	NY	9/22/2005	147,954,000	Yes
Bucyrus Community Hospital	BUCYRUS	OH	7/20/2005	25,945,000	Yes
Morehead Memorial Hospital	EDEN	NC	6/15/2005	47,190,000	Yes
Platte Valley Medical Center	BRIGHTON	CO	6/15/2005	111,814,000	No
Summit Hospital	PHENIX CITY	AL	5/19/2005	32,666,400	Yes
Medical University of South Carolina	CHARLESTON	SC	12/23/2004	401,158,000	Yes
Fort Washington Medical Center	FT WASHINGTON	MD	12/23/2004	11,055,000	Yes
Montefiore Medical Center	BRONX	NY	12/15/2004	172,244,000	Yes
Baton Rouge General Medical Center	BATON ROUGE	LA	12/7/2004	198,000,000	Yes
Ellis Hospital	SCHENECTADY	NY	11/23/2004	15,552,000	Yes
University of New Mexico	ALBUQUERQUE	NM	11/18/2004	183,399,000	No
ROWAN REGIONAL MEDICAL CENTER	SALISBURY	NC	8/18/2004	80,759,000	Yes
MAIMONIDES MEDICAL CENTER	BROOKLYN	NY	6/24/2004	104,704,000	Yes
KALEIDA HEALTH SYSTEM (refinancing)	BUFFALO	NY	5/20/2004	90,540,000	Yes
GRAND ITASCA CLINIC & HOSPITAL	GRAND RAPIDS	MN	4/15/2004	42,100,000	No
ST. MARK'S MEDICAL CENTER	LA GRANGE	TX	3/25/2004	24,245,000	No
DRUMRIGHT HOSPITAL	DRUMRIGHT	OK	10/15/2003	7,666,000	Yes
BETSY JOHNSON HOSPITAL	DUNN	NC	9/23/2003	22,500,000	Yes
OSWEGO	OSWEGO	NY	9/22/2003	28,200,000	Yes
SHOSHONE MEDICAL CENTER	KELLOGG	ID	9/4/2003	17,982,000	No
RIO GRANDE	DEL NORTE	CO	7/22/2003	10,000,000	No
MOORE MEDICAL CENTER	MOORE	OK	6/12/2003	39,722,300	Yes
LUTHERAN MEDICAL CENTER	BROOKLYN	NY	3/27/2003	85,327,000	Yes
ENGLEWOOD HOSPITAL & MED CTR	ENGLEWOOD	NJ	11/27/2002	94,020,000	Yes
HUDSON MEDICAL CENTER	HUDSON	WI	5/6/2002	26,100,000	Yes
JERSEY CITY MEDICAL CENTER	JERSEY CITY	NJ	9/26/2001	187,232,000	Yes
BAPTIST HEALTHCARE SYSTEM	BEAUMOUNT	TX	8/15/2001	107,300,000	No

The District is confident that analysis that has been presented by the District and Howard to date, as well as the forthcoming FHA analysis will sufficiently address all major outstanding questions about the NCMC to ensure that the District is investing in a solid development project. Howard has stated in the Exclusive Rights Agreement that it will not move forward with the project without FHA approval.

Finally, the NCMC does not propose to add any additional licensed beds in the District of Columbia. It merely proposes to transfer 250 of Howard University Hospital's 482 licensed beds, already approved through the CON process, to the NCMC site. The NCMC project should be analyzed for feasibility and market need. However, the CON is not the right process. In fact, it is unclear how residents of the District will benefit from the CON process vs. the process proposed by the District. It will merely add unnecessary delays.